

AMENDMENTS TO THE CLAIMS

Marked-Up Version

1. (Currently Amended) A lip treatment comprising:

Morinda citrifolia seed oil present in an amount between about 0.1-20 percent by weight;
Proxeronine; and
ingredients selected from the group consisting of Menthol, Myristyl Lactate, Myristyl Myristate, Octyl Palmitate, Vitamin E, Avocado Oil, Cetyl Alcohol, Chamomile Oil, Isopropyl Lanolate, Microcrystalline Wax, Propylparaben, Shea Butter, Zinc Oxide, Aloe Vera Extract, Methylparaben, Jojoba Oil, Fragrance, Cetyl Alcohol, Aloe Extract, Methylparaben, Propylparaben, Vitamin E Acetate, Vitamin E Linoleate, Sodium Saccharinate, Sweet Almond Oil, Macadamia Ternifolia (Nut) Seed Oil, Kukui Nut Oil, Shea Butter, Camphor Gum, Menthol, Tocopheryl Acetate (Vitamin E Acetate), Propylparaben, and Flavor.

2. (Original) The lip treatment of claim 1, wherein said *Morinda citrifolia* seed oil is present in an amount between about 0.1 and 5 percent by weight.

3. (Original) The lip treatment of claim 1, wherein said *Morinda citrifolia* seed oil is present in an amount between about 5 and 10 percent by weight.

4. (Original) The lip treatment of claim 1, wherein said *Morinda citrifolia* seed oil is present in an amount between about 10 and 15 percent by weight.

5. (Original) The lip treatment of claim 1, wherein said *Morinda citrifolia* seed oil is present in an amount between about 15 and 20 percent by weight.

6. (Original) The lip treatment of claim 1, further comprising *Morinda citrifolia* fruit juice present in an amount between about 0.1-50 percent by weight.

7. (Original) The lip treatment of claim 1, further comprising dimethicone present in an amount between about 1-5 percent by weight.

8. (Original) The lip treatment of claim 1, further comprising octyl methoxycinnamate present in an amount between about 5-10 percent by weight.

9. (Original) The lip treatment of claim 1, further comprising octyl salicylate present in an amount between about 1-5 percent by weight.

10. (Original) The lip treatment of claim 1, further comprising oxybenzone present in an amount between about 1-5 percent by weight.

11. (Original) The lip treatment of claim 1, further comprising petrolatum present in an amount between about 20-80 percent by weight.

12. (Original) The lip treatment of claim 1, further comprising ozokerite present in an amount between about 5-20 percent by weight.

13. (Original) The lip treatment of claim 1, further comprising cetyl alcohol present in an amount between about 1-5 percent by weight.

14. (Original) The lip treatment of claim 1, further comprising squalane present in an amount between about 1-5 percent by weight.

15. (Original) The lip treatment of claim 1, further comprising butylated hydroxytoluene present in an amount between about 1-5 percent by weight.

16. (Original) The lip treatment of claim 1, further comprising lanolin present in an amount between about 5-10 percent by weight.

17. (Original) The lip treatment of claim 1, further comprising paraffin present in an amount between about 5-10 percent by weight.

18. (Original) The lip treatment of claim 1, further comprising beeswax present in an amount between about 1-5 percent by weight.

19. (Original) The lip treatment of claim 1, further comprising phenyl trimethicone present in an amount between about 1-5 percent by weight.

20. (Original) The lip treatment of claim 1, further comprising benzophenone-3 present in an amount between about 1-5 percent by weight.

21. (Original) The lip treatment of claim 1, further comprising sorbitan oleate present in an amount between about 1-5 percent by weight.

22. (Original) The lip treatment of claim 1, further comprising white petrolatum present in an amount between about 40-70 percent by weight.

23. (Original) The lip treatment of claim 1, further comprising isopropyl myristate present in an amount between about 5-10 percent by weight.

24. (Original) The lip treatment of claim 1, further comprising a wax derivative present in an amount between about 1-5 percent by weight.

25. (Original) The lip treatment of claim 1, further comprising isopropyl lanolate present in an amount between about 1-5 percent by weight.

26. (Original) The lip treatment of claim 1, further comprising isocetyl stearate present in an amount between about 1-5 percent by weight.

27. (Cancelled)

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office on April 4, 2003, the Examiner rejected claims 1, 7-8, 11-12, 22, and 27 under 35 U.S.C. 103(a) and rejected claims 1 and 27 under 35 U.S.C. 103 (a). Applicants respectfully submit that the amendments provided herein overcome the rejections made to 1, 7-8, 11-12, 22, and 27 and place the application in condition for allowance.

In the Office Action, the Examiner rejected claims 1, 7-8, 11-12, 22, and 27 under 35 U.S.C. 103(a) as being unpatentable over Tahitian Noni Products (<http://www.noni-now.com>, copyright 1998-2003) (hereinafter Noni-now) in view of Pelle et al (6,136,301). Applicant submits that Noni-now was not available as a reference more than one year prior to the filing date of the present application and hence is not available as prior art under 103(a). Noni-now is a website provided by a distributor of Applicant's products. The information on the site was provided to the distributor by Applicant after April 20, 2000. Enclosed herewith is a printout showing that the site was not even activated until April 29, 2002. As a result, the site is not prior art despite the copyright date.

35 U.S.C. §103

The requirement for a reference to qualify as prior art under Section 103 are set forth in rejection is set forth in M.P.E.P 2141.01, which provides:

“Prior available under 34 U.S.C. 102 is available under 35 U.S.C. 103”.

Applicants respectfully submit that Noni-now was not available as a reference more than one year prior to the filing date of the present application, and thus is not an appropriate reference for a under 35 U.S.C. 103.

In addition, Examiner rejected claims 1 and 27 under 35 U.S.C. 103 (a) as being unpatentable over Bonte (5,676,949) (hereinafter Bonte) in view of Wadsworth et al (WO 01/15537) (hereinafter Wadsworth) in further view of Fisher (Living Better, vol 1 (5)) (hereinafter Fisher).

Bonte teaches a cosmetic or pharmaceutical product for treating skin disorders containing small amounts of mulberry.

Wadsworth teaches use of *Morinda Citrifolia* oil in a cosmetic (vol. 3 line 42).

Fisher teaches use of *Morinda Citrifolia* juice as a medicinal cure for specific problems (Living Better, vol 1 (5)).

In contrast, independent claim 1, as amended teaches, "A lip treatment comprising: *Morinda citrifolia* seed oil present in an amount between about 0.1-20 percent by weight.; Proxeronine; and ingredients selected from the group consisting of Menthol, Myristyl Lactate, Myristyl Myristate, Octyl Palmitate, Vitamin E, Avocado Oil, Cetyl Alcohol, Chamomile Oil, Isopropyl Lanolate, Microcrystalline Wax, Propylparaben, Shea Butter, Zinc Oxide, Aloe Vera Extract, Methylparaben, Jojoba Oil, Fragrance, Cetyl Alcohol, Aloe Extract, Methylparaben, Propylparaben, Vitamin E Acetate, Vitamin E Linoleate, Sodium Saccharinate, Sweet Almond Oil, *Macadamia Ternifolia* (Nut) Seed Oil, Kukui Nut Oil, Shea Butter, Camphor Gum, Menthol, Tocopheryl Acetate (Vitamin E Acetate), Propylparaben, and Flavor.

Applicant respectfully submits that since all other claims in the application depend from claim one, neither Wadsworth and Bonte nor Fisher and Bonte are an appropriate combination.

Applicants respectfully submit that a prima facie case of obviousness cannot be established by the cited references. Applicants respectfully submit that none of the prior art references, alone or in any combination thereof, teach or suggest the limitations provided in independent

claim 1. This is illustrated above showing that the Bonte reference lacks elements of the claims. There is no showing that additional references teach the elements that are lacking. That is, the cited references do not teach or suggest, alone or in combination, a lip treatment comprising Proxeronine as disclosed and claimed in the present invention. Accordingly, for at least this reason, Applicant respectfully submits that a *prima facie* case of obviousness is not established by the cited references since the prior art reference (or references when combined) do not teach or suggest all the claim limitations.

Therefore, since none of the references alone or in any combination there teach or suggest all of the limitations of independent claim 1, Applicants respectfully submit that independent claim 1 are not made obvious by the cited references. Similarly, Applicants respectfully submit that dependent claims 2-26, which depend from independent claim 1, are also not made obvious by the cited references for at least the reasons provided above.

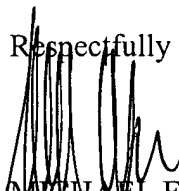
Thus, Applicants respectfully submit that none of the claims of the claim set provided herein is either anticipated nor made obvious from the prior art references. Further, Applicants respectfully submit that the amendments provided herein do not include new matter, as they are supported by the disclosure of the present invention as originally filed. Moreover, Applicants further submit that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made.

CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this 12 day of June, 2003.

Respectfully submitted,



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